

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>OMAHASTEAKS.com, INC., a Delaware Corporation; OMAHA STEAKS INTERNATIONAL, INC., a Nebraska Corporation,</b>  <b>Plaintiffs</b>  <b>v.</b>  <b>GWB, LLC d/b/a Grand Western Steaks, a Florida Limited Liability Company; ABSOLUTE WEB SERVICES, a Florida Corporation,</b>  <b>Defendants</b>	<b>Case No. 17-cv-____</b>  <b>COMPLAINT AND JURY DEMAND</b>
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**PARTIES, JURISDICTION & VENUE**

1. Plaintiff OmahaSteaks.com, Inc. is a Delaware corporation with its principal place of business in Omaha, Nebraska.
2. Plaintiff Omaha Steaks International, Inc. is a Nebraska corporation with its principal place of business in Omaha, Nebraska.
3. Defendant GWB, LLC d/b/a Grand Western Steaks, is a Florida Limited Liability Company.
4. Defendant Absolute Web Services is a Florida corporation.
5. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1338(a), as this action arises under the Lanham Act, an Act of Congress relating to trade dress; 28 U.S.C. § 1338(b), as the claim of unfair competition is joined with the substantial and the related claim under the Lanham Act; and 28 U.S.C. § 1367(a), supplemental jurisdiction over state law claims.



6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2).


### **FACTUAL BACKGROUND**

7. The Plaintiffs are affiliated companies. Omaha Steaks International has advertised and sold steak and other beef and food products under the “Omaha Steaks” trademark since as early as 1958.

8. Omaha Steaks International has invested significant time and money developing and promoting the “Omaha Steaks” name, brand, and trademark and creating and maintaining good will associated with its trademark and goods sold thereunder.

9. To protect the assets associated with its business, good will, and reputation, Omaha Steaks International applied for and received numerous United States trademark registrations (the “Omaha Steaks Marks”), including, but not limited to, the following:

<u>Registration Date</u>	<u>Registration No.</u>	<u>Trademark</u>
12/06/1988	1,515,602	OMAHA STEAKS
09/24/1996	2,002,499	OMAHA STEAKS ANGUS
05/11/2004	2,840,193	
03/30/2010	3,768,690	

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10. The Omaha Steaks Marks have been in continuous use and extensively promoted in connection with Omaha Steaks' meat and other food products.

11. Omaha Steaks International is extremely vigilant and protective of its intellectual property, including its trademarks and trade dress. Perceived infringement is given prompt attention.

12. As a result of Omaha Steaks International's widespread use of its Omaha Steaks Marks, the extensive advertising and promotion of Omaha Steaks products, and the exceptional marketplace acceptance of those products, the Omaha Steaks Marks are famous, have acquired secondary meaning, and are recognized by the consuming public as identifying Omaha Steaks as the source and origin of such services and distinguishing Omaha Steaks' products from others.

13. Omaha Steaks International has entered into trademark license agreements with its affiliated companies, including Plaintiff OmahaSteaks.com, Inc.

14. OmahaSteaks.com, Inc. operates as an Internet company and facilitates on-line sales of steak and other beef and food products to its customers at [www.omahasteaks.com](http://www.omahasteaks.com).

15. After considerable research and strategic planning, OmahaSteaks.com, Inc.'s in-house team carefully created and designed its website from scratch, incorporating the iconic color from Trademark No. 3,768,691 throughout.

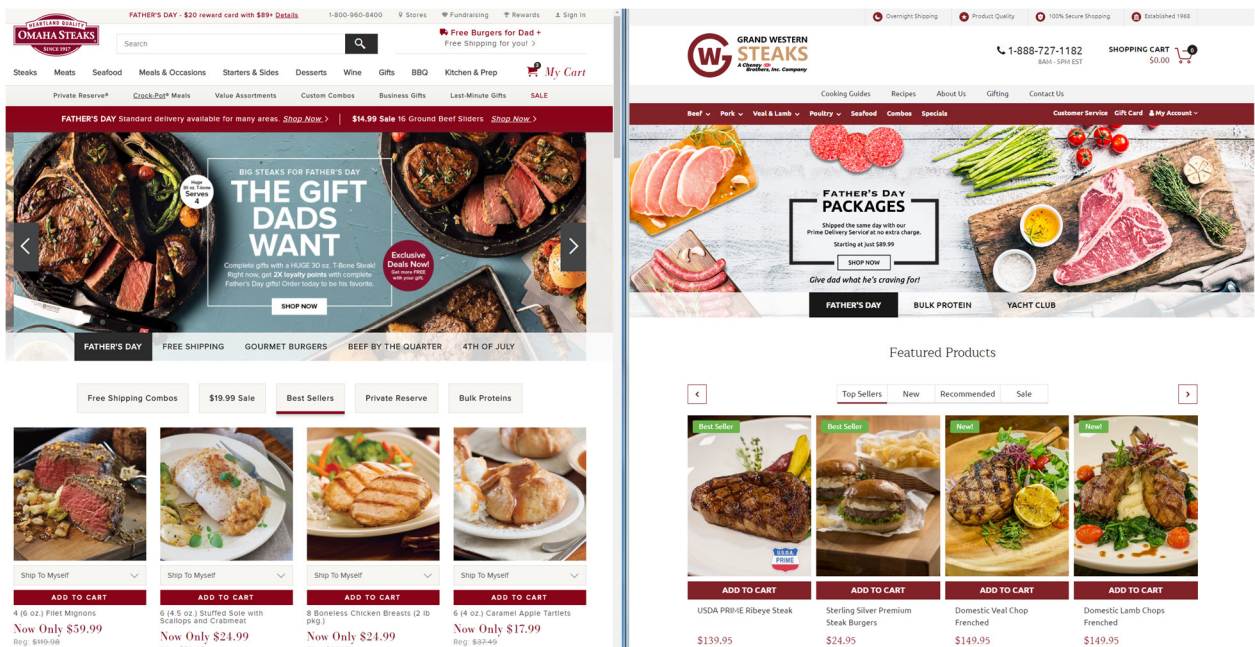
16. OmahaSteaks.com, Inc. launched its current website in March of 2016.

#### **DEFENDANT GWB'S WEBSITE**

17. In June of 2017, Plaintiffs became aware of Defendant GWB's website, <http://www.grandwesternsteaks.com>, from which GWB d/b/a Grand Western Steaks advertises and sells steak and other beef and food products.

18. [www.grandwesternsteaks.com](http://www.grandwesternsteaks.com) discloses that its web services are provided by Defendant Absolute Web Services.

19. GWB's website design is remarkably similar to [www.omahasteaks.com](http://www.omahasteaks.com), as demonstrated in a side-by-side comparison:



20. GWB's site features the same color scheme, layout, buttons, typeface, and graphics, leaving the overall impression that it is dominated by the substantial incorporation of OmahaSteaks.com's design. Moreover, the content and design, aimed at selling beef and other food products, are indistinguishable, if not identical.

21. Defendants infringed and presumably continue to infringe OmahaSteaks.com's trade dress by, at a minimum, the following:

a. Copying or imitating OmahaSteaks.com's website, incorporating its "look and feel," colors, layout, buttons, typeface, and graphics. These actions give rise to the likelihood of confusion, mistake and / or deception as to the source, origin, association, affiliation, sponsorship, or approval of OmahaSteaks.com.

22. Defendants' unauthorized activity arose after the Omaha Steaks Marks became famous. Indeed, Internet archives show that the accused design elements at [www.grandwesternsteaks.com](http://www.grandwesternsteaks.com) post-date the launch of [www.omahasteaks.com](http://www.omahasteaks.com).

23. Plaintiffs believe that Defendants' acts were and are being committed willfully and with full knowledge of Omaha Steaks International, [www.omahasteaks.com](http://www.omahasteaks.com), and the corresponding intellectual property rights.

24. Defendants' conduct has caused and will cause irreparable injury and damage to Plaintiffs' business, reputation, and good will. Plaintiffs have no adequate remedy at law.

### **FIRST CLAIM FOR RELIEF – TRADE DRESS INFRINGEMENT**

25. The allegations contained in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

26. Omaha Steaks International owns the Omaha Steaks Marks, which are valid, registered trademarks, and which are licensed to OmahaSteaks.com.

27. OmahaSteaks.com incorporated elements of the trademarks into its website design, which it owns, and which constitutes its trade dress.

28. OmahaSteaks.com's trade dress is distinctive and non-functional.

29. Defendant GWB's website incorporates trade dress similar to [www.omahasteaks.com](http://www.omahasteaks.com), without the consent of OmahaSteaks.com, in a manner that is likely to cause confusion among ordinary consumers as to the source, sponsorship, affiliation, or approval of the Defendant

GWB's goods, and constitutes infringement of OmahaSteaks.com's rights in its trade dress in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114 and 15 U.S.C. § 1125(a)(1)(A).

**SECOND CLAIM FOR RELIEF – VIOLATION OF NEBRASKA  
UNIFORM DECEPTIVE TRADE PRACTICES ACT**

30. The allegations contained in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

31. Defendants' acts and omissions constitute a violation of the Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-302, *et seq.* In violation of the Deceptive Trade Practices Act, Defendants' actions include, without limitation: (1) causing confusion or misunderstanding as to affiliation, connection, or association with their certification by another; (2) representing that goods or services have sponsorship or approval, or that Defendant has sponsorship, approval, status, affiliation, or connection that it does not have; (3) willfully engaging in the trade practice knowing it to be deceptive.

**REQUEST FOR RELIEF**

Plaintiffs respectfully request that the Court enter its Order as follows:

**A. Enjoining Defendants from:**

- copying or otherwise using trade dress that imitates or copies that of OmahaSteaks.com.
- making misrepresentations, or false or misleading representations of fact, which are suggestive that Defendant shares some association, approval, or authorization from OmahaSteaks.com or Omaha Steaks International and/or

that Omaha Steaks International or OmahaSteaks.com are interested parties in the businesses represented by or associated with Defendants;

- engaging in unfair competition and deceptive trade practices and engaging in infringement of the OmahaSteaks.com trade dress;

**B.** Awarding OmahaSteaks.com damages in an amount to be proved at trial;

**C.** Directing Defendant GWB to disgorge all of its profits, direct and indirect, attributable to its wrongful conduct;

**D.** Awarding Plaintiffs' costs and attorney's fees pursuant to 15 U.S.C. § 1117 and Neb. Rev. Stat. §§ 59-1609 & 87-303;

**E.** Finding Defendants' acts of infringement to be intentional and willful, and awarding treble damages pursuant to 15 U.S.C. § 1117; and

**F.** Directing any and all further and other relief the Court deems equitable.

WHEREFORE, Plaintiff requests judgment in its favor against Defendants as herein described.

**JURY DEMAND**

Plaintiffs hereby demand trial by jury.

June 23, 2017

***/s/ Nora M. Kane***

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